

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 2nd day of May, two thousand nine.

PRESENT:

HON. WILFRED FEINBERG,
HON. ROBERT D. SACK,
HON. SONIA SOTOMAYOR,
Circuit Judges.

SEE LEONG WOO, SIEW HAR CHONG, MENG
FOO, PUI WEN WOO,
Petitioners,

v.

ERIC H. HOLDER JR., ATTORNEY GENERAL,*
Respondent.

08-4078-ag
NAC

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric H. Holder Jr. is automatically substituted for former Attorney General Michael B. Mukasey as the respondent in this case.

1 **FOR PETITIONERS:** Jin Hu, New York, NY.

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3 **FOR RESPONDENT:** Michael F. Hertz, Acting United
4 States Attorney General, Civil
5 Division, Ernesto H. Molina Jr.,
6 Assistant Director, Sheri R. Glaser,
7 Trial Attorney, Office of
8 Immigration Litigation, Civil
9 Division, United States Department
10 of Justice Washington, DC.

11
12 UPON DUE CONSIDERATION of this petition for review of a
13 Board of Immigration Appeals ("BIA") decision, it is hereby
14 ORDERED, ADJUDGED, AND DECREED that the petition for review
15 is DENIED.

16 Petitioners, all natives and citizens of Malaysia, seek
17 review of a July 24, 2008 order of the BIA affirming the
18 June 25, 2007 decision of Immigration Judge ("IJ") Joanna
19 Miller Bukszpan denying Petitioners' applications for
20 asylum, withholding of removal, and relief under the
21 Convention Against Torture ("CAT"). In re Woo, Chong, Foo,
22 Woo, Nos. A 79 265 332/352/353/354 (B.I.A. July 24, 2008),
23 aff'g Nos. A 79 265 332/352/353/354 (Immig. Ct. N.Y. City
24 June 25, 2007). We assume the parties' familiarity with the
25 underlying facts and procedural history of the case.

26 When the BIA affirms the IJ's decision in some respects
27 but not others, this Court reviews the IJ's decision as
28 modified by the BIA decision, i.e., minus the arguments for

1 denying relief that were rejected by the BIA. See Xue Hong
2 Yang v. U.S. Dep't of Justice, 426 F.3d 520, 522 (2d Cir.
3 2005). This Court reviews the agency's factual findings
4 under the substantial evidence standard. 8 U.S.C.
5 § 1252(b)(4)(B); see also Manzur v. U.S. Dep't of Homeland
6 Sec., 494 F.3d 281, 289 (2d Cir. 2007). We review de novo
7 questions of law and the application of law to undisputed
8 fact. See, e.g., Salimatou Bah v. Mukasey, 529 F.3d 99, 110
9 (2d Cir. 2008).

10 As a preliminary matter, because Petitioners failed to
11 claim before the BIA that they feared persecution at the
12 hands of the Malaysian government, we decline to address
13 that unexhausted claim. See Lin Zhong v. U.S. Dep't of
14 Justice, 480 F.3d 104, 119-20 (2d Cir. 2007). The BIA found
15 that Petitioners failed to demonstrate past persecution
16 because the sexual assaults to which Chong testified were
17 alleged criminal acts that occurred in the United States,
18 not Malaysia. The BIA further found that the threats made
19 against Petitioners did not, cumulatively, amount to
20 persecution. Although Petitioners assert that the BIA erred
21 in upholding the finding by the IJ that they did not suffer
22 past persecution, they make no specific argument in support

1 of that conclusory assertion. Accordingly, we deem any
2 challenge to the agency's past persecution finding waived.
3 See Yueqing Zhang v. Gonzales, 426 F.3d 540, 541 n.1, 545
4 n.7 (2d Cir. 2005).

5 With regard to the Petitioners' alleged fear of future
6 persecution by the followers of the True Buddha School,
7 their membership in which allegedly led to the sexual
8 attacks on Chong by one of its leaders, the IJ found that
9 they failed to demonstrate a well-founded fear of
10 persecution because: (1) the prior threats against them were
11 not sufficiently severe to constitute persecution; and
12 (2) the threats and harassment they endured were not made by
13 the Malaysian government, and there was no indication that
14 the government was unable or unwilling to protect them.
15 Although Petitioners argue in their brief that the Malaysian
16 government's unwillingness to protect them is "obvious"
17 based on the background evidence indicating that the True
18 Buddha School is popular and that the Malaysian police are
19 corrupt, they cite no record evidence in their brief
20 supporting that assertion. See Fed. R. App. P. 28(a)(9)(A).
21 Petitioners' argument lacks merit because they point to no
22 evidence compelling a conclusion contrary to that of the

1 agency. See Manzur, 494 F.3d at 289; see also Sioson v.
2 Knights of Columbus, 303 F.3d 458, 460 (2d Cir. 2002).

3 Because Petitioners waived any challenge to the IJ's
4 finding that they failed to demonstrate past persecution and
5 substantial evidence supports the IJ's finding that they
6 failed to demonstrate a well-founded fear of persecution,
7 the agency properly denied their application for asylum.
8 See 8 U.S.C. § 1101(a)(42). We therefore do not address the
9 agency's alternative bases for denial.

10 Because Petitioners were unable to show the objective
11 likelihood of persecution needed to make out an asylum
12 claim, they were necessarily unable to meet the higher
13 standard required to succeed on a claim for withholding of
14 removal. See Paul v. Gonzales, 444 F.3d 148, 156 (2d Cir.
15 2006). Their CAT claim must also necessarily fail because
16 it is predicated upon the same facts as their asylum and
17 withholding claims. See Kyaw Zwar Tun v. INS, 445 F.3d 554,
18 567 (2d Cir. 2006) (holding that torture is "something more
19 severe than the kind of treatment that would suffice to
20 prove persecution").

For the foregoing reasons, the petition for review is DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____